Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934	)	

COMMENTS OF AMERITECH

Michael S. Pabian
Counsel for Ameritech
2000 W. Ameritech Center Drive
4H82
Hoffman Estates, IL 60196-1025
(847) 248-6044

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Ameritech submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY.

In the NPRM, the Commission undertakes a comprehensive inquiry into the structure that should be applicable to local exchange carrier ("LEC") provision of commercial mobile radio services ("CMRS"). First, the Commission inquires into the necessity of the continued existence of the requirement for a fully separate subsidiary ("FSS") for Bell Operating Company ("BOC") provision of cellular services currently embodied in §22.903 of its rules. The Commission has proposed to eliminate that

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[1] In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services; Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934; Amendment of the Commission's Rules to Establish New Personal Communications Services; Requests of Bell Atlantic-NYNEX Mobile, Inc., and U S West, Inc., for Waiver of Section 22.903 of the Commission's Rules, WT Docket No. 96-162, GEN Docket No. 90-314, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, FCC 96-319 (released August 13, 1996) ("NPRM").

requirement in favor of its proposed "nonstructural separate affiliate" paradigm for Tier 1 LEC provision of CMRS generally. The Commission solicits comments on that proposal and on whether that should take place immediately or after some transition.

Second, the Commission solicits comments on its proposal for nonstructural safeguards for Tier 1 LEC provision of CMRS.

Third, the Commission seeks comments on proposed rule changes to implement provisions of the Telecommunications Act of 1996 ("TA 96") regarding the joint marketing of CMRS and landline services, customer proprietary network information ("CPNI"), and network information disclosure.

Finally, the Commission proposes, at a minimum, to amend §22.903 to apply only to in-region cellular activity of the BOCs and not to prohibit cellular subsidiary ownership of non-incumbent LEC ("ILEC") landline transmission facilities. It also grants all BOCs a waiver of the current §22.903 with respect to out-of-region activities.

In conducting this NPRM, the Commission specifically responds to one of the issues remanded to it by the United States Court of Appeals for the Sixth Circuit.[2] In the Cincinnati Bell Decision, the Court stated

> [T]he FCC should determine as soon as possible whether the structural separation requirement placed upon the Bell's [for the provision of cellular service] is necessary and in the public interest.[3]

Ameritech applauds the breadth of the Commission's undertaking in this docket and it encourages the Commission to adopt a pro-competitive and deregulatory approach in setting the requirements for LEC provision of CMRS. In that endeavor, the

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[2] Cincinnati Bell Telephone Company, et al., v. FCC, 69 F.3d 752 (6th Cir. 1995) ("Cincinnati Bell Decision").

[3] Id. at 768.

Commission should look to the past for guidance. The Commission should seriously consider the success of the nonstructural safeguard regime it adopted almost a decade ago for BOC provision of both CPE and enhanced services and the fact that there has been no showing as to why a similar approach would not work in this case. Specifically, the Commission should adopt a minimalist approach in this context as well and impose only those restrictions that are absolutely necessary to ensure the fair and efficient operation of the marketplace. To that end, the Commission should immediately eliminate the separate subsidiary requirement contained in §22.903 of its rules and should adopt only those minimal nonstructural safeguards necessary for LEC provision of CMRS services without the requirement of any separate affiliate.

II. SECTION 22.903 OF THE COMMISSION'S RULES SHOULD BE ELIMINATED IMMEDIATELY.

The proper question before the Commission is not whether the FSS requirement currently contained in §22.903 of the Commission's rules is effective in preventing BOC abuse in the provision of cellular services. Rather, it is whether such a drastic restriction on corporate structure and operation is necessary. In other words, the real issue is whether concerns about the potential of BOC abuse -- to the extent that that potential is even reasonably perceived -- can be addressed by other, less intrusive means.[4] The severity of the FSS structure was acknowledged by the Commission itself

[4] See, Cincinnati Bell Decision at 761.

when it chose to apply the requirement to the BOCs at divestiture. In particular, the Commission noted its intention to review the separation requirement within two years.[5]

In light of the dynamics of today's marketplace, it is clear that BOCs no longer have the ability to leverage any alleged monopoly to favor competitive wireless services. Moreover, there has been no showing that, even if they could do so, nonstructural safeguards of the type the Commission successfully implemented for BOC provision of CPE and enhanced services would not be sufficient protection.

In addressing the necessity of the FSS requirement and, alternatively, the adequacy of nonstructural safeguards, the Commission specifically discussed issues of interconnection, price discrimination, cross-subsidy, and leveraging of market power.[6] In addition, the Commission has incorporated the comments of parties filed in connection with the request of BellSouth for authorization to engage in resale of cellular service ("BellSouth Resale Authorization Request").[7]

With respect to interconnection, the Commission indicated that it believes that there is some need for separation (either FSS or the Commission's proposed "nonstructural separate affiliate") to expose the interconnection transaction between a LEC and its cellular operations to public scrutiny.[8] Commenters opposing BellSouth's

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[5] In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, CC Docket No. 93-115, Report and Order, FCC 83-552 (released December 30, 1983) ("BOC Separation Order") 95 F.C.C. 2d 1117 at 1140.

[6] NPRM at ¶¶ 43-49.

[7] Id. at ¶ 25 and Appendix A.

[8] Id. at ¶ 40.

cellular resale authorization request argued that LECs will continue to have the incentive to discriminate on interconnection issues by abusing the interconnection negotiation process by, for example, denying new forms of interconnection that do not advantage the LECs' CMRS operations.[9] However, the Commission has already twice previously concluded that no structural separation was required to ensure non-discriminatory interconnection by LECs for competitive wireless offerings. Specifically, the Commission found that the imposition of an FSS requirement was not necessary to ensure nondiscriminatory interconnection in the case of personal communications services ("PCS")[10] and in the case of specialized mobile radio services ("SMR").[11] As the Commission noted in the SMR Order

> [W]e conclude that existing regulatory safeguards are sufficient to prevent possible discrimination in cross-subsidization. We note that wireline telephone companies are required to provide reasonable interconnection upon request. [Citation omitted.] As evidence of the infrequency of the interconnection problems, we are unaware of any complaints alleging discriminatory interconnection filed by unaffiliated cellular providers against wireline carriers with cellular affiliates. [Citation omitted.][12]

Moreover, as the Commission has recently clarified, under the provisions of TA 96 competitive cellular and PCS service providers are entitled to any technically feasible

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[9] Id. at A-7-8.

[10] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, FCC 93-451 (released October 22, 1993) 8 F.C.C. Rcd. 7700 at 7751.

[11] In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, Report and Order, FCC 95-98 (released March 7, 1995) ("SMR Order") 10 F.C.C. Rcd. 6280 at 6293.

[12] Id.

interconnection arrangement they request.[13] Failure by an ILEC to respond to such a request will be immediately detectable and subject to complaint. Thus, it is not necessary to require an FSS for BOC-related cellular services to ensure that competitive cellular and other CMRS providers get the type of interconnection they need to compete. Competitive providers literally need only to figure out what type of interconnection they want and make a request for it. If it is technically feasible, they can have it.

With respect to price discrimination, the Commission inquired whether some sort of separate affiliate requirement would be valuable in detecting or deterring price discrimination. The proper question, however, is not whether a separate affiliate requirement might be helpful in that regard, but whether it is necessary. The Commission has clarified that competitive providers of cellular and PCS services are entitled to pay transport and termination rates based on the ILEC's total element long run incremental costs ("TELRIC") (plus a reasonable portion of joint and common costs plus a reasonable profit).[14] No further safeguard is required. This is the very standard (cost-based pricing) TA 96 uses to protect competitive local exchange carriers ("CLECs") from the possibility that a LEC might unfairly favor its own LEC operations.

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[13] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (released August 8, 1996) ("First Report and Order") at ¶¶ 999-1026.

[14] First Report and Order at ¶¶ 1041-1045.

With respect to cross-subsidy, the Commission noted only that parties argued that accounting rules and reporting requirements and audit schedules cannot replace the protections against cross-subsidy offered by an FSS.[15] Given the industry-revolutionizing effects of TA 96, however, there remains little left in the BOCs' business to serve as a source for a cross-subsidy. It must be remembered that, in the case of a cross-subsidy, the recovery of costs in the competitive business must be shifted to a non-competitive business in a way that results in rates in the less-competitive business being increased over what they would have otherwise been in order to recover those costs. If rates for less-competitive services are not higher than they otherwise would have been, there is no cross-subsidy, there is only lost revenue.

With the continuing entry of more competition and the ability of competing carriers to obtain interconnection and unbundled network elements at TELRIC-based rates, the market will not permit ILECs a free hand in raising rates for basic local exchange services. Moreover, for those carriers under pure price caps both at the federal level and in their states,[16] the concept of cross-subsidy is meaningless since the permissible level for rates for basic services is not dependent on underlying costs.[17] In these cases, shifting costs from fully competitive services to arguably less competitive services would result only in a revenue loss.

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15 NPRM at ¶ 45.

16 Ameritech is currently under "pure" price regulation in all of its jurisdictions.

17 See Ameritech comments filed August 26, 1996, in CC Docket No. 96-150.

Nonetheless, to the extent the Commission believes that some form of safeguard against cross-subsidy are still appropriate, there is no evidence that the Commission's Part 64 joint cost rules are not up to the task.[18] To argue to the contrary impugns the Commission's entire Part 64 joint cost allocation regime.

With respect to market power, the Commission inquired as to whether permitting unseparated offering of cellular service would give BOCs an additional incentive and ability to discriminate against competitors. Some commenters, of course, have continued to argue that BOC/LEC control of "bottleneck" facilities justifies especially rigorous safeguards.[19] Again, these arguments, however, are the same ones that the Commission rejected when it refused to impose a structural separation requirement on LEC provision of PCS services.[20]

More importantly, however, with respect to all of the issues noted above, no party in any proceeding before the Commission has made any showing as to why nonstructural safeguards of the type the Commission has successfully implemented for BOC provision of CPE and enhanced services would not work in the context of

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[18] The Commission has continuously affirmed the effectiveness of the Joint Cost Rules. See, for example, In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, Report and Order, CC Docket No. 90-621, released December 20, 1991, at ¶ 56, "...we conclude that our cost accounting safeguards constitute a realistic and reliable alternative to structural separation to protect against cross-subsidy." See also, In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs Local Exchange Area, Notice of Proposed rulemaking, CC Docket 96-149, released July 18, 1996, at ¶ 146. See also, In the Matter of Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-150, released July 18, 1996, at ¶ 27.

[19] NPRM at A-1-3.

[20] See note 10, supra.

BOC/LEC provision of any CMRS. Specifically, there has been no demonstration that competitive provision of CPE or enhanced services has suffered in any way by the Commission's decision to abandon the CI-II FSS requirement for the BOCs. Even assuming for argument's sake that BOCs/LECs were to maintain a "bottleneck" with respect to interconnection with local exchange services, there has been no showing of any history of anticompetitive conduct with respect to that bottleneck in the case of provision of either CPE or enhanced services. Moreover, there is no history of discriminatory conduct in connection with the provision of or interconnection with wireless services.[21]

Moreover, the enactment of TA 96 virtually destroys earlier underlying assumptions about ILEC "bottleneck" status in two ways. First, it ensures that access to the alleged bottleneck is available (by competitive CMRS providers and others) on nondiscriminatory terms as Congress deemed appropriate. Second, by encouraging competitive provision of former bottleneck services, TA 96 eliminates the ability of ILECs to use their bottleneck in a way that unfairly advantages their own competitive offerings (e.g., by cross-subsidization).

In sum, the issue is not whether the FSS requirement would be helpful in preventing potential BOC abuses in the provision of cellular services, but rather whether it is necessary -- i.e., whether less stringent nonstructural safeguards should be adopted instead. No evidence has been produced to show that the nonstructural safeguards that have been effective in other well-established contexts would not work

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[21] See note 11, supra.

here. Given the duplication costs associated with staffing and operating an FSS and the lack of any incremental benefit provided by such structure, the Commission should immediately eliminate the separate subsidiary requirement contained in §22.903 of its rules.

III. SAFEGUARDS FOR LEC PROVISION OF PCS SHOULD BE TRULY "NONSTRUCTURAL."

With respect to BOC/Tier 1 LEC provision of PCS, the Commission has correctly tentatively concluded that a CI-II/§22.903 FSS is not a necessary safeguard. Rather, the Commission proposes "a nonstructural safeguard plan" that includes compliance with the CPNI requirement of §222 of the Act, compliance with outstanding network disclosure rules, compliance with statutory interconnection obligations, compliance with the Commission's Part 64 and Part 32 accounting rules, and the offering of PCS through a "nonstructural separate affiliate." This separate affiliate would (1) maintain separate books of account, (2) not jointly own transmission or switching facilities with the LEC, and (3) obtain any exchange telephone company provided communications at tariffed rates and conditions. The FSS requirements of separate officers, separate debt, and independent operations would not apply to this affiliate.

Ameritech agrees that, to the extent that any safeguards are necessary in the area of LEC provision of PCS services, nonstructural safeguards are sufficient. However, the "nonstructural separate affiliate" requirement the Commission has

adopted from the plan proposed by PacTel is not necessary.[22] The requirement to maintain a separate legal entity is a requirement to conduct the business with a certain corporate structure. Ameritech, however, suggests that that structure adds nothing over the nonstructural safeguards adopted by the Commission in its CI-III orders. More specifically, there is no requirement for separate ownership of enhanced services equipment in the Commission's CI-III nonstructural rules. Obviously, Part 64 dictates that the investment associated with equipment dedicated to the provision of enhanced services be "removed" from regulated accounts prior to the separations/ratemaking process (to the extent that there might be any ratemaking based on embedded costs). Moreover, the requirement that the activity take tariffed services at tariffed rates is currently an essential element of the Commission's CEI requirements for the provision of enhanced services.[23] Thus, simple application of CI-III principles to LEC provision of PCS will, as it has done in the case of enhanced services, ensure against any anticompetitive abuses.[24]

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[22] Ameritech respectfully suggests that the term "nonstructural separate affiliate" is a regulatory oxymoron in this context. While Ameritech appreciates that the separation of the affiliate in the Commission's proposal is not as full as that required for a fully separate subsidiary -- FSS -- required by CI-II and the cellular separation rules, it is nonetheless a "structural" requirement.

[23] In the Matter of Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1724 (1995) at ¶¶ 21, 30.

[24] Given the modification of the tariffing requirements, effected by §§251 and 252 of TA 96, Ameritech suggests that the Commission modify its proposed nonstructural safeguards to simply state that the LEC demonstrate in a CEI plan that the use of the LEC's communications services be available to competitive PCS providers on the same terms and conditions.

IV. SECTION 222 AS ENACTED BY TA 96, SHOULD GOVERN THE USE OF CPNI IN CONNECTION WITH CMRS.

In connection with BOC-affiliated provision of cellular services, the Commission has inquired as to whether it should eliminate §22.903(f) of the Commission's rules. The Commission has suggested that its rule would prohibit a customer from authorizing disclosure of his/her CPNI to a BOC's cellular affiliate unless he/she was also willing to make that information public. Ameritech agrees that, if §22.903 is retained, subsection (f) should be eliminated.[25] Moreover, no new rules need to be implemented. In that regard, the Commission has inquired whether the enactment of §601(d), which permits joint marketing of CMRS and wireline communications services, necessitates new rules governing the treatment of CPNI. The answer is no. That issue -- proper treatment of CPNI in the context of joint marketing of wireless and wireline services -- is, of course, not peculiar to BOC provision of CMRS. Rather, the issue of CPNI and wireless services is one already involved in the Commission's current rulemaking proceeding concerning the implementation of §222 and is applicable to all carriers -- including those ILECs who

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[25] However, Ameritech disagrees with the Commission's tentative interpretation of §22.903(f). The predecessor to that provision read:

> [The BOC] may not provide to any such separate corporation any customer proprietary information unless such information is available to any member of the public on the same terms and conditions.

The old rule seemed to contemplate a mechanism where the customer information would be available to individual third parties (not the public generally). In this context, the rule would be satisfied if the BOC released customer information only to those individual third parties authorized by the customer (whether to the cellular affiliate or some other entity) and to no one else. There was no requirement that the BOC could not have given the information to its cellular affiliate with the customer's consent unless the customer authorized its release to the world. Rather the BOC would have to give the same information to a nonaffiliate if that entity obtained the customer's consent -- i.e., "on the same terms and conditions." Ameritech suggests that §22.903(f) be read similarly.

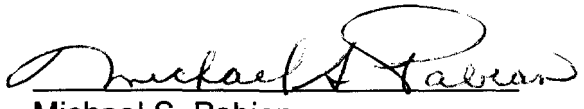
today are not operating under §22.903 as well as IXCs who may be involved in direct or joint provision of CMRS services.

Finally, the Commission has inquired whether the wireless "bucket" it has proposed in its CPNI proceeding should be further subdivided. The answer is no. Wireless services, including cellular, paging, and cellular long distance services are services that customers naturally think of as logically connected, just as are interLATA and intraLATA toll on the one hand and intraLATA toll and local service on the other. Further fractioning of the wireless bucket is not necessary.

V. CONCLUSION.

Nonstructural safeguards have been tremendously successful in the case of BOC provision of CPE and enhanced services. It is only logical, therefore, that the Commission immediately replace its structural cellular separation requirement with nonstructural safeguards applicable to LEC the provision of PCS services and that those nonstructural safeguards mirror the ones the Commission has required for enhanced services under CI-III. No "nonstructural separate affiliate" is necessary.

Respectfully submitted,



Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6044

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